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RECORDATION NO 16256 FILED 1425

MAR 24 1989 -1 15 PM

INTERSTATE COMMERCE COMMISSION

RECORDATION NO 16256 FILED 1425

MAR 24 1989 -1 15 PM

INTERSTATE COMMERCE COMMISSION

March 24, 1989

St. Louis Southwestern Railway Company
Conditional Sale Financing Dated as of January 15, 1989
10.03% Conditional Sale Indebtedness
Due January 15, 1999

Dear Ms. McGee:

Pursuant to 49 U.S.C. § 11303, I enclose herewith on behalf of St. Louis Southwestern Railway Company for filing and recordation, counterparts of the following:

(a) Conditional Sale Agreement dated as of January 15, 1989, between Southern Pacific Transportation Company and St. Louis Southwestern Railway Company; and

(b) Agreement and Assignment dated as of January 15, 1989, between Southern Pacific Transportation Company and Irving Trust Company.

The names and addresses of the parties to the aforementioned Agreements are as follows:

(a) Agent:

Irving Trust Company
101 Barclay Street
New York, N.Y. 10007

2 HONEY LANE, CHEAPSIDE
LONDON EC2V 8BT, ENGLAND
TELEPHONE: 1-606-1421
FACSIMILE: 1-606-1425
1-606-0348

9-083A025

Date

Fee

ICC Washington, D. C.

C. Deane
Center Registered

MAR 24 1 05 PM '89
MOTOR OPERATING UNIT

(2) Builder:

Southern Pacific
Transportation Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105

(3) Railroad:

St. Louis Southwestern
Railway Company
Southern Pacific Building
One Market Plaza
San Francisco, California 94105

Please file and record the documents referred to in this letter and index them under the names of the Agent, the Builder and the Railroad.

The equipment covered by the aforementioned agreements is listed in Exhibit A attached hereto. The equipment bears the legend "Ownership Subject to a Security Agreement Filed with the Interstate Commerce Commission".

Enclosed is our check for \$13 for the required recordation fee. Please accept for recordation one counterpart of the enclosed agreements, stamp the remaining counterparts with your recordation number and return them to the delivering messenger along with your fee receipt, addressed to the undersigned.

Very truly yours,

Laurance V. Goodrich

Laurance V. Goodrich
As Agent for St. Louis
Southwestern Railway Company

Noreta R. McGee, Secretary,
Interstate Commerce Commission,
Washington, D.C. 20423

encls.

16256 **A**

RECORDATION NO. _____ FILED 1428

MAR 24 1989 *1 15 PM

INTERSTATE COMMERCE COMMISSION

[CS&M Ref: 3909-218]

AGREEMENT AND ASSIGNMENT

Dated as of January 15, 1989

Between

SOUTHERN PACIFIC TRANSPORTATION COMPANY

AND

**IRVING TRUST COMPANY,
as Agent.**

AGREEMENT AND ASSIGNMENT

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AGREEMENT AND ASSIGNMENT dated as of January 15, 1989, between SOUTHERN PACIFIC TRANSPORTATION COMPANY ("Builder") and IRVING TRUST COMPANY, acting as Agent under a Finance Agreement dated as of the date hereof ("Finance Agreement") (said Agent, so acting, together with its successors and assigns, being hereinafter called the "Assignee").

The Builder and St. Louis Southwestern Railway Company ("Railroad") have entered into a Conditional Sale Agreement dated as of the date hereof ("CSA"), covering the remanufacture, sale and delivery, on the conditions therein set forth, by the Builder and the purchase by the Railroad of the railroad equipment described in Schedule B to the CSA (said equipment being hereinafter called the "Equipment");

In consideration of the mutual agreements herein contained:

SECTION 1. The Builder hereby assigns, transfers and sets over unto the Assignee:

(a) all the right, title and interest of the Builder in and to each unit of the Equipment when and as severally delivered to and accepted by the Railroad, subject to payment by the Assignee to the Builder of the amount required to be paid under Section 4 hereof;

(b) all the right, title and interest of the Builder in and to the CSA (except the right to remanufacture and deliver the Equipment and the right to receive the payments specified in subparagraph (a) of the third paragraph of Article 4 thereof and reimbursements for taxes paid or incurred by the Builder as provided in Article 5 thereof), and in and to any and all amounts which may be or become due or owing by the Railroad to the Builder under the CSA in respect of the Purchase Price (as defined in the CSA) of the Equipment and interest thereon, and in and to any other sums becoming due from the Railroad under the CSA, other than those hereinabove excluded; and

(c) except as limited by subparagraph (b) hereof, all the Builder's rights, powers, privileges and remedies under the CSA;

without any recourse against the Builder for or on account of the failure of the Railroad to make any of the payments

provided for in, or otherwise to comply with, any of the provisions of the CSA; provided, however, that this Assignment shall not subject the Assignee to, or transfer, or pass, or in any way affect or modify, the liability of the Builder to remanufacture and deliver the Equipment in accordance with the CSA or with respect to its obligations contained or referred to in Article 14 of the CSA, or relieve the Railroad from its obligations to the Builder contained or referred to in Articles 2, 3, 4, 5, 13, 14 and 15 of the CSA, it being understood and agreed that, notwithstanding this Assignment, or any subsequent assignment pursuant to the provisions of Article 15 of the CSA, all obligations of the Builder to the Railroad with respect to the Equipment shall be and remain enforceable by the Railroad, its successors and assigns, against and only against the Builder. In furtherance of the foregoing assignment and transfer, the Builder hereby authorizes and empowers the Assignee, in the Assignee's own name or in the name of the Assignee's nominee, or in the name of and as attorney for the Builder hereby irrevocably constituted to ask, demand, sue for, collect and receive any and all sums to which the Assignee is or may become entitled under this Assignment and to ask, demand, sue for and enforce compliance by the Railroad with the terms and agreements on its part to be performed under the CSA, but at the expense and liability and for the sole benefit of the Assignee.

SECTION 2. The Builder agrees that it shall remanufacture the Equipment in full accordance with the CSA and will deliver the same upon completion to the Railroad in accordance with the provisions of the CSA; and that, notwithstanding this Assignment, it will perform and fully comply with each of and all the covenants and conditions of the CSA set forth to be performed and complied with by the Builder. The Builder further agrees that it will warrant to the Assignee and each Investor (as defined in the Finance Agreement) and the Railroad that at the time of delivery of each unit of the Equipment under the CSA it had legal title to such unit and good and lawful right to sell such unit and that title to such unit was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA); and the Builder further agrees that it will defend the title to each unit of the Equipment against the demands of all persons whomsoever based on claims originating prior to the delivery of such unit by the Builder under the CSA; all subject, however, to the provisions of the CSA and the rights of the Railroad thereunder. The Builder will not deliver any units of the Equipment to the Railroad under the CSA until the filings and

recordations referred to in Article 19 of the CSA have been effected (the Builder and its counsel being entitled to rely on advice from special counsel for the Investors that such filings and recordations have been effected).

SECTION 3. The Builder agrees with the Assignee that in any suit, proceeding or action brought by the Assignee under the CSA for any installment of, or interest on, indebtedness in respect of the Purchase Price of the Equipment or to enforce any provision of the CSA, the Builder will indemnify, protect and hold harmless the Assignee from and against all expense, loss or damage suffered by reason of any defense, setoff, counterclaim or recoupment whatsoever of the Railroad arising out of a breach by the Builder of any obligation with respect to the Equipment or the remanufacture, delivery or warranty thereof, or by reason of any defense, setoff, counterclaim or recoupment whatsoever arising by reason of any other indebtedness or liability at any time owing to the Railroad by the Builder. The Builder's obligation so to indemnify, protect and hold harmless the Assignee is conditional upon (a) the Assignee's timely motion or other appropriate action, on the basis of Article 15 of the CSA, to strike any defense, setoff, counterclaim or recoupment asserted by the Railroad in any such suit, proceeding or action and (b) if the court or other body having jurisdiction in such suit, proceeding or action denies such motion or other action and accepts such defense, setoff, counterclaim or recoupment as a triable issue in such suit, proceeding or action, the Assignee's prompt notification to the Builder of the asserted defense, setoff, counterclaim or recoupment and the Assignee's giving the Builder the right, at the Builder's expense, to compromise, settle or defend against such defense, setoff, counterclaim or recoupment.

The Builder agrees to indemnify, protect and hold harmless the Assignee from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Assignee or its assigns because of the use by the Builder in or about the remanufacture of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right. The Assignee will give prompt notice to the Builder of any such liability or claim actually known to the Assignee and will give the Builder the right, at the Builder's expense, to compromise, settle or defend against such claim.

SECTION 4. The Assignee, on each Closing Date fixed as provided in Article 4 of the CSA with respect to a Group (as defined in said Article 4) of the Equipment, shall pay to the Builder an amount equal to the portion of the Purchase Price of the Equipment as shown on the invoice therefor then being settled for which, under the terms of said Article 4, is payable in installments, provided that there shall have been delivered to the Assignee, as provided in Article 15 of the CSA, at least five business days (as defined in said Article 4) prior to such Closing Date, the following documents, in form and scope satisfactory to the special counsel hereinafter mentioned, in such number of counterparts as may be reasonably requested by said special counsel:

(a) a bill of sale from the Builder to the Assignee transferring to the Assignee a security interest in the units of the Equipment in such Group, warranting to the Assignee and to the Railroad that at the time of delivery of such units under the CSA the Builder had legal title to such units and good and lawful right to sell such units and that title to such units was free of all claims, liens, security interests and other encumbrances (other than those created by the CSA), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Builder under the CSA;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group as contemplated by Article 3 of the CSA;

(c) a certificate of the Vice President-Finance or the Treasurer of the Railroad to the effect that the Purchase Price of each unit of Equipment being settled for on such Closing Date is not in excess of the fair market value of such unit;

(d) an invoice of the Builder for the units of the Equipment in such Group and any supplemental invoice for which settlement is then being made, and in each case, if the invoice price is other than as shown in Schedule B to the CSA, accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices stated therein;

(e) an opinion of Cravath, Swaine & Moore, who are acting as special counsel for the Investors, dated as

of such Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by the Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument, (ii) the CSA has been duly authorized, executed and delivered by the Railroad and the Builder and is a legal, valid and binding instrument enforceable against the Railroad and the Builder in accordance with its terms, (iii) this Agreement has been duly authorized, executed and delivered by the Builder and, assuming due authorization, execution and delivery thereof by the Assignee, is a legal, valid and binding instrument enforceable against the Builder in accordance with its terms, (iv) the Assignee is vested with all the rights, titles, interests, powers and privileges purported to be assigned to it by this Agreement, (v) the Assignee has a valid security interest in the units of the Equipment in such Group and such units, at the time of delivery thereof to the Railroad under the CSA, were free from all claims, liens, security interests and other encumbrances (other than those created by the CSA), (vi) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of the Finance Agreement, the CSA or this Agreement, (vii) the CSA and this Agreement have been filed with the Interstate Commerce Commission and, no other filing or recordation is necessary for the protection of the rights of the Assignee in any state of the United States of America or in the District of Columbia and (viii) registration of the CSA, this Agreement or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended; and such opinion shall also cover such other matters as may reasonably be requested by the Assignee or the Investors;

(f) an opinion of counsel for the Railroad, dated as of such Closing Date, to the effect set forth in clauses (i), (ii), (v), (vi) and (vii) of subparagraph (e) above (said counsel, in rendering such opinion, being permitted to assume due authorization,

execution and delivery of the Finance Agreement by parties thereto other than the Railroad), and stating that the Railroad is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted;

(g) an opinion of counsel for the Builder, dated as of such Closing Date, to the effect set forth in clauses (iii), (iv) and (v) of subparagraph (e) above in respect of the Equipment and stating that (i) the Builder is a duly organized and existing corporation in good standing under the laws of its jurisdiction of incorporation and has the power and authority to own its properties and to carry on its business as now conducted; and (ii) the CSA has been duly authorized, executed and delivered by the Builder and is a legal and valid instrument binding upon the Builder and enforceable against the Builder in accordance with its terms;

(h) a certificate of an officer of the Railroad, dated as of such Closing Date, to the effect that (i) no event of default, or event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and is then continuing, (ii) no Federal tax liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and, to the best of his knowledge and belief, no other tax liens have been filed and are currently in effect which would adversely affect the security interest of the Assignee in the Equipment and (iii) no taxes, assessments or governmental charges or levies are delinquent which would adversely affect the security interest of the Assignee in the Equipment;

(i) a letter from Allen H. Harrison, Jr., Esq., of Wilmer, Cutler & Pickering as to his search of the records of the Interstate Commerce Commission in respect of the status of title to each unit being settled for on such Closing Date; and

(j) a receipt from the Builder for any payment (other than the payment being made by the Assignee pursuant to the first paragraph of this Section 4) required to be made on such Closing Date to the Builder with respect to the Equipment, unless such payment is

made by the Assignee with funds furnished to it for that purpose by the Railroad;

provided, however, that with respect to Equipment for which a final Supplemental Invoice (as defined in the CSA) is submitted by the Builder as permitted by Article 4 of the CSA, the only documents which must be delivered to the Assignee are those required by subparagraphs (c) and (d) of this Section 4.

In giving the opinions specified in subparagraphs (e), (f) and (g) of the first paragraph of this Section 4, counsel may qualify any opinion to the effect that any agreement is a legal, valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the enforcement of creditors' rights generally and general principles of equity. In giving the opinion specified in said subparagraphs (e) and (f), counsel may rely on the opinion of counsel for the Builder as to authorization, execution and delivery by the Builder of the documents executed by the Builder and as to title to the Equipment at the time of delivery thereof under the CSA; in giving the opinion specified in said subparagraph (e), counsel may rely on the opinion of counsel for the Railroad as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Builder or the opinion of counsel for the Railroad; and in giving the opinion specified in said subparagraph (f), counsel may rely on the bill of sale and opinion of counsel for the Builder as to claims, liens, security interests and other encumbrances arising from, through or under the Builder, except as to claims, liens, security interests and other encumbrances held by or running to the Railroad.

The obligation of the Assignee hereunder to make any payment provided for in this Section 4 is hereby expressly conditioned upon the Assignee's having on deposit, pursuant to the terms of the Finance Agreement, sufficient funds available thereunder to make such payment. The Assignee shall not be obligated to make payment at any time after the commencement of any proceedings specified in clause (c) or (d) of Article 16 of the CSA or if the Assignee has actual knowledge that an event of default, or any event which with the lapse of time and/or demand provided for in the CSA could constitute an event of default, shall have occurred and be continuing under the

CSA. (The Agent shall be deemed to have actual knowledge of such an event of default or event when one or more officers in the Corporate Trust Department of the Agent responsible for monitoring this transaction has actual knowledge of such an event of default or event.) In the event that the Assignee shall not make payment for any Group of the Equipment, the Assignee shall reassign to the Builder, without recourse to the Assignee, all right, title and interest of the Assignee in and to the units of the Equipment with respect to which payment has not been made by the Assignee.

SECTION 5. The Assignee may assign all or any of its rights under the CSA, including the right to receive any payments due or to become due to it from the Railroad thereunder. In the event of any such assignment any such subsequent or successive assignee or assignees shall, to the extent of such assignment, enjoy all the rights and privileges and be subject to all the obligations of the Assignee hereunder.

SECTION 6. The Builder hereby:

(a) represents and warrants to the Assignee that the CSA was duly authorized by it and lawfully executed and delivered by it for a valid consideration, that, assuming due authorization, execution and delivery by the Railroad, the CSA is, in so far as the Builder is concerned, a valid and existing agreement binding upon it and the Railroad in accordance with its terms and that it is now in force without amendment thereto;

(b) agrees that it will from time to time and at all times, at the request of the Assignee, make, execute and deliver all such further instruments of assignment, transfer and assurance and do such further acts and things as may be necessary and appropriate in the premises to give effect to the provisions hereinabove set forth and more perfectly to confirm the rights, titles and interests hereby assigned and transferred to the Assignee or intended so to be; and

(c) agrees that, upon request of the Assignee, it will execute any and all instruments which may be necessary or proper in order to discharge of record the CSA or any other instrument evidencing any interest of the Builder therein or in the Equipment.

SECTION 7. The terms of this Assignment and all rights and obligations hereunder shall be governed by the

laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the CSA.

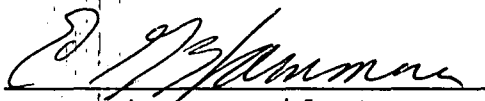
SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made.

SECTION 9. This Assignment may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof.

IN WITNESS WHEREOF, each of the parties hereto, pursuant to due corporate authority, has caused this instrument to be duly executed in its corporate name by its officers, thereunto duly authorized, all as of the date first above written, and each of the undersigned signatories hereto declares under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY,

by


Vice President

Executed on March 16, 1989

IRVING TRUST COMPANY,

by

Vice President

Executed on March 16, 1989

laws of the State of New York; provided, however, that the parties shall be entitled to all the rights conferred as provided in Article 23 of the CSA.

SECTION 8. The Assignee agrees to deliver an executed counterpart of this Assignment to the Railroad, which delivery shall constitute due notice of the assignment hereby made.

SECTION 9. This Assignment may be executed in any number of counterparts, such counterparts together constituting but one and the same contract, but the counterpart delivered to the Assignee shall be deemed to be the original and all other counterparts shall be deemed to be duplicates thereof.

IN WITNESS WHEREOF, each of the parties hereto, pursuant to due corporate authority, has caused this instrument to be duly executed in its corporate name by its officers, thereunto duly authorized, all as of the date first above written, and each of the undersigned signatories hereto declares under penalty of perjury that the foregoing is true and correct and was executed on the date indicated below its signature.

SOUTHERN PACIFIC TRANSPORTATION
COMPANY,

by _____

Executed on March , 1989

IRVING TRUST COMPANY,

by 

Vice President

Executed on March 8 , 1989

ACKNOWLEDGMENT OF NOTICE OF ASSIGNMENT

ST. LOUIS SOUTHWESTERN RAILWAY COMPANY hereby acknowledges due notice of and consents to the assignment made by the foregoing Agreement and Assignment as of January 15, 1989.

ST. LOUIS SOUTHWESTERN
RAILWAY COMPANY,

by

EE Eddy
TREASURER